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SUBJECT TO PROTECTIVE ORDER

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12 *Counterclaim-Plaintiff McAfee, Inc.*

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16 TVIIM, LLC,

Civil Action No. 3:13-CV-04545 (VC)

17 Plaintiff,

18 v.

19 MCAFEE, INC.,

20 Defendant.

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23  
24  
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26  
27 MCAFEE, INC.’S FIRST  
28 SUPPLEMENTAL RESPONSES AND  
OBJECTIONS TO PLAINTIFF TVIIM,  
LLC’S FIRST SET OF  
INTERROGATORIES (NOS. 1-6)

MCAFEE, INC.’S FIRST SUPPLEMENTAL  
RESPONSES AND OBJECTIONS PLAINTIFF  
TVIIM, LLC’S FIRST SET OF  
INTERROGATORIES (NOS. 1-6)

3:13-CV-04545 (VC)

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In accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant McAfee, Inc. (“McAfee” or “Defendant”) hereby supplements its objections and responses to Plaintiff TVIIM, LLC’s (“TVIIM’s”) First Set of Interrogatories, dated January 17, 2014 (“First Set of Interrogatories”).

**GENERAL OBJECTIONS AND RESPONSES**

McAfee makes the following objections to TVIIM’s First Set of Interrogatories, and to each and every Instruction, Definition, and Interrogatory therein.

1. McAfee objects to this First Set of Interrogatories, and each Instruction, Definition, and Interrogatory therein, to the extent it seeks to impose upon McAfee any obligation beyond or inconsistent with those set forth in the Federal Rules of Civil Procedure, the Local Rules of this Court, including the Patent Local Rules of this Court, and/or other Orders of this Court entered in this action.

2. McAfee objects to each Interrogatory to the extent that it is vague, ambiguous, and/or seeks information that is not relevant to the claims or defenses of any party in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence.

3. McAfee objects to this First Set of Interrogatories, and each Instruction, Definition, and Interrogatory therein, to the extent it seeks information concerning products not at issue in this case.

4. McAfee objects to each Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the common-interest privilege, or any other applicable protection, privilege, or immunity. McAfee intends to and does claim and assert all such protections, privileges, and immunities. As referred to below, McAfee will state the bases for any such claims and assertions in a privilege log. To the extent

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privileged or protected information is included in any responses, this is inadvertent and shall not constitute a waiver of any applicable protection.

5. McAfee objects to each Interrogatory to the extent that it seeks information that McAfee is under an obligation to a third party or a court order not to disclose. McAfee will provide responsive, non-privileged, confidential information from third parties only after appropriate consents from relevant third parties are obtained and in accordance with an appropriate Protective Order.

6. McAfee objects to each Interrogatory to the extent it is not limited in scope or limited to a reasonable time period. Unless otherwise indicated, McAfee's responses are limited to the period from October 1, 2007 to date. *Cf.* 35 U.S.C. § 286 ("[N]o recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement.").

7. McAfee objects to each Interrogatory to the extent it seeks information regarding accused products or accused instrumentalities that are not made, used, offered for sale, sold in or imported into the United States.

8. McAfee objects to each Interrogatory to the extent it seeks information that is not known to McAfee or not in McAfee's possession, custody, or control.

9. McAfee objects to each Interrogatory to the extent it seeks information that is publicly available or otherwise already known to TVIIM.

10. McAfee objects to each Interrogatory to the extent it employs imprecise specifications of the information sought; McAfee will provide only that information which can reasonably be identified as responsive.

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1       11. McAfee objects to each Interrogatory to the extent it is duplicative, repetitive, or  
2       seeks information included in other discovery propounded by TVIIM in this action.

3       12. McAfee objects to each Interrogatory to the extent it calls for a legal conclusion.

4       13. McAfee objects to each Interrogatory to the extent that it requires premature  
5       expert discovery or testimony. McAfee reserves the right to amend or supplement its responses  
6       after considering opinions rendered by any party’s experts, though McAfee does not undertake to  
7       do so except to the extent required by the Federal Rules of Civil Procedure.

8       14. McAfee objects to each Interrogatory to the extent that it is dependent on  
9       depositions and documents that have not yet been taken or produced.

10      SPECIFIC OBJECTIONS TO INSTRUCTIONS

11      1. McAfee objects to Instruction No. 15, which purports to require McAfee to state  
12       the basis for any claim of privilege in its interrogatory responses themselves, on the grounds that  
13       it is overly burdensome and seeks to impose obligations beyond those set forth in the Federal  
14       Rules of Civil Procedure, the Local Rules of this Court, including the Patent Local Rules of this  
15       Court, and/or other Orders of this Court entered in this action. McAfee will state the bases for  
16       any claim or assertion of protection, privilege, or immunity in a privilege log.

17      2. McAfee objects to Instruction No. 18, which purports to require supplementation  
18       of responses within 15 days of learning new information, on the grounds that it is overly  
19       burdensome and seeks to impose obligations beyond those set forth in the Federal Rules of Civil  
20       Procedure, the Local Rules of this Court, including the Patent Local Rules of this Court, and/or  
21       other Orders of this Court entered in this action. McAfee will supplement its responses as  
22       necessary during the fact discovery period, the timeline for which is to be set by the Court.

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3. McAfee objects to Instruction No. 19, which purports to require McAfee to attach copies of all documents cited in an interrogatory response to the response itself, on the grounds that it is overly burdensome and seeks to impose obligations beyond those set forth in the Federal Rules of Civil Procedure, the Local Rules of this Court, including the Patent Local Rules of this Court, and/or other Orders of this Court entered in this action. McAfee will comply with the requirements of Federal Rule of Civil Procedure 33(d) and will produce during discovery copies of any documents it cites in interrogatory responses.

## SPECIFIC OBJECTIONS TO DEFINITIONS

1. McAfee objects to TVIIM's definition of "YOU," "DEFENDANT," or "MCAFEE" as vague, overly broad, and unduly burdensome. McAfee further objects to the definitions to the extent they purport to require McAfee to search for or produce information outside of McAfee's own possession, custody, or control. For the purposes of this First Set of Interrogatories, McAfee will understand "YOU," "DEFENDANT," or "MCAFEE" to refer to McAfee, Inc.

2. McAfee objects to TVIIM's definition of "PLAINTIFF" or "INNERWALL" as vague, overly broad, and unduly burdensome. In particular, Innerwall, Inc., the assignee listed on the face of the asserted patent, appears to be a separate entity with no relation to TVIIM. For the purposes of this First Set of Interrogatories, McAfee will understand "PLAINTIFF" to refer to TVIIM, LLC.

3. McAfee objects to TVIIM's definition of "DOCUMENT(S)" to the extent it seeks to impose any obligation beyond those set forth in the Federal Rules of Civil Procedure, the Local Rules of this Court, including the Patent Local Rules of this Court, and/or other Orders of this Court entered in this action.

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4. McAfee objects to TVIIM's definition of "VULNERABILITIES" to the extent that TVIIM is attempting to construe a claim term, which is an issue of law and the sole province of the Court. McAfee products, features, and functionality other than those listed in TVIIM's forthcoming Disclosure of Asserted Claims and Infringement Contentions are not relevant to this action, and McAfee will not provide discovery on products, features, and functionality other than those specifically and distinctly identified in TVIIM's forthcoming Disclosure of Asserted Claims and Infringement Contentions, unless otherwise specified below.

5. McAfee objects to TVIIM’s definition of “VULNERABILITIES TECHNOLOGY” as vague and ambiguous. McAfee further objects to this definition to the extent that TVIIM is attempting to construe a claim term, which is an issue of law and the sole province of the Court. McAfee products, features, and functionality other than those listed in TVIIM’s forthcoming Disclosure of Asserted Claims and Infringement Contentions are not relevant to this action, and McAfee will not provide discovery on products, features, and functionality other than those specifically and distinctly identified in TVIIM’s forthcoming Disclosure of Asserted Claims and Infringement Contentions, unless otherwise specified below.

6. McAfee objects to TVIIM’s definition of “ACCUSED INSTRUMENTALITIES” as vague, ambiguous, overly broad, and unduly burdensome. McAfee further objects to the definition to the extent that it mischaracterizes the operation of the identified products and/or is inconsistent with TVIIM’s definition of “VULNERABILITIES” and “VULNERABILITIES TECHNOLOGY.” In particular, McAfee objects to TVIIM’s inclusion of “Endpoint Protection” in its definition of “ACCUSED INSTRUMENTALITIES.” Endpoint Protection is not a product offered by McAfee. McAfee further objects to this definition on the ground that it is not limited by time. McAfee products, features, and functionality other than those listed in TVIIM’s

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1 forthcoming Disclosure of Asserted Claims and Infringement Contentions are not relevant to this  
2 action, and McAfee will not provide discovery on products, features, and functionality other than  
3 those specifically and distinctly identified in TVIIM’s forthcoming Disclosure of Asserted  
4 Claims and Infringement Contentions, unless otherwise specified below.

5       7. McAfee objects to the Interrogatories to the extent that they purport to require  
6 McAfee to identify or describe “all” or “any” actions, information, or persons on the grounds  
7 that such Interrogatories are overly broad and unduly burdensome.

8       8. Nothing in McAfee’s responses to the Interrogatories constitutes an admission  
9 concerning the scope of the asserted patent’s claim(s) nor the relation of any such claim(s) to any  
10 product made, used, sold, or offered for sale in or imported into the United States by McAfee.

11      9. McAfee’s objections and responses herein shall not waive or prejudice any  
12 objections it may later assert, including, but not limited to, objections as to relevance,  
13 materiality, or admissibility in subsequent proceedings or at the trial of this or any other matter.

14      10. McAfee has responded to the Interrogatories as its interprets and understands each  
15 Interrogatory. If TVIIM subsequently asserts an interpretation of any Interrogatory that differs  
16 from McAfee’s understanding of that Interrogatory, McAfee reserves the right to supplement its  
17 objections and/or responses.

18      11. McAfee’s objections and responses are based on documents and information in its  
19 possession, custody, or control, and that it has been able to ascertain based on a reasonable  
20 search and inquiry. McAfee’s document production and its investigation, research, and analysis  
21 of the facts relevant to this action are ongoing. Accordingly, McAfee reserves the right to amend  
22 and/or supplement these objections and responses in accordance with Federal Rules of Civil  
23 Procedure 26 and 33. Moreover, these objections and responses are made without prejudice to  
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1 McAfee’s right to present at trial additional evidence or witnesses as may be discovered or  
2 produced.

3 **SPECIFIC OBJECTIONS AND RESPONSES**  
4

5 Without waiving or limiting any of the foregoing objections, but rather incorporating  
6 them into each of the following objections and responses, McAfee objects and responds to the  
7 specific Interrogatories contained in TVIIM’s First Set of Interrogatories as follows:

8 **INTERROGATORY NO. 1:**  
9

10 Please identify each of the ACCUSED INSTRUMENTALITIES and commercial  
11 products containing or using the ACCUSED INSTRUMENTALITIES by product name, model  
12 number, calendar(s) year sold, and other identifying indicia.

13 **RESPONSE TO INTERROGATORY NO. 1:**  
14

15 McAfee objects to this Interrogatory on the grounds that it is vague, ambiguous,  
16 overbroad, and unduly burdensome. As set forth above, TVIIM’s definition of “ACCUSED  
17 INSTRUMENTALITIES” is so vague as to provide McAfee with essentially no information  
18 about what is being accused. McAfee further objects to this Interrogatory on the ground that it  
19 improperly attempts to shift TVIIM’s burden to identify accused products and prove  
20 infringement of those products to McAfee, the Defendant. McAfee further objects to this  
21 Interrogatory as premature given that TVIIM has not yet served its infringement contentions.  
22 McAfee further objects to this Interrogatory on the ground that it is not reasonably calculated to  
23 lead to admissible evidence, because it is not limited to a reasonable time period and seeks  
24 information regarding products that are not made, used, offered for sale, sold in or imported into  
25 the United States.

26 Subject to and without waiving the foregoing General and Specific Objections, McAfee  
27 will produce non-privileged documents sufficient to show the names, model numbers (if  
28 applicable), and years sold in the United States of the distinct products specifically listed in

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1 TVIIM’s definition of “ACCUSED INSTRUMENTALITY” as McAfee understands them, and  
 2 to the extent such documents exist and can be located after a reasonable search.  
 3

**FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:**

4 Subject to and without waiving the foregoing General and Specific Objections, McAfee  
 5 further responds as follows:  
 6

7 The following chart lists the product name, variant names, date of first sale, and date of  
 8 end of life (if applicable) for McAfee products identified in TVIIM’s infringement contentions as  
 9 accused products, which include the functionality identified in TVIIM’s infringement  
 10 contentions as accused functionality:  
 11

Accused Product	Variants	Date of First Sale	Date of End of Life
<b>CONSUMER</b>			
All Access	Household; Individual; Small & Home Business; Multi Device Security	November 2012	N/A
Antivirus Plus	OLBU Bundle; Virus Scan Plus; ViruScan/AntiVirus Plus	November 2012	N/A
Internet Security	OLBU Bundle	November 2012	N/A
Live Safe		December 2012	N/A
Security Center		November 2012	N/A
Total Protection		November 2012	N/A
<b>ENTERPRISE</b>			
Policy Auditor (PA)	Desktop; Server	January 2007	N/A
Network Access Control (MNAC)	NAC Appliance; Network Security NAC Module	April 2007	April 2014

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Accused Product	Variants	Date of First Sale	Date of End of Life
Remediation Manager (PARM)	Remediation Manager NAC Module; FlashBox; CVF Citadel VFlash Update	May 2007	April 2013
Deep Defender (DD)		July 2012	N/A
Hercules		January 2007	September 2009
Endpoint Suites	Complete Endpoint Protection – Enterprise (CEE)	May 2013	N/A
	Complete Endpoint Protection – Business (CEB)	May 2013	N/A
	Endpoint Protection – Advanced (EPA)	Q2 2010	N/A
	Total Protection Endpoint – Enterprise (TPE)	Q2 2010	N/A
	Total Protection Enterprise – Advanced (TEA)	Q2 2010	N/A
	Total Protection for Compliance	August 2008	N/A

As discovery and McAfee’s analysis is ongoing, McAfee reserves the right to further supplement and/or amend its response as appropriate.

**INTERROGATORY NO. 2:**

Please identify each and every basis for YOUR contention, set forth under the heading “FIRST AFFIRMATIVE DEFENSE” in YOUR ANSWER AND COUNTERCLAIM, that “McAfee has not infringed and is not infringing, either directly, contributorily, or by inducement, any valid or enforceable claim of” the PATENT-IN-SUIT, including the principal and material facts and all DOCUMENTS that YOU believe support each basis and all PERSONS who may have knowledge of any such facts.

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1           **RESPONSE TO INTERROGATORY NO. 2:**

2           McAfee objects to this Interrogatory as premature given that TVIIM has not yet served  
3 any infringement contentions. McAfee further objects to this Interrogatory on the ground that it  
4 improperly attempts to shift TVIIM’s burden to show infringement to McAfee. McAfee further  
5 objects to this Interrogatory as overbroad and unduly burdensome, because, among other things,  
6 it purports to require McAfee to identify or describe “all” or “any” information and persons.

7           McAfee further objects to this Interrogatory on the ground that it seeks premature expert  
8 discovery or testimony. McAfee further objects to this Interrogatory to the extent it calls for  
9 legal conclusions and/or seeks information protected from disclosure by the attorney-client  
10 privilege, the work product doctrine, the common-interest privilege, or any other applicable  
11 protection, privilege, or immunity.

12           Subject to and without waiving the foregoing General and Specific Objections, after  
13 TVIIM has identified the particular products and functionality it is accusing of infringement,  
14 McAfee will produce non-privileged documents sufficient to show the design and operation of  
15 the specifically identified accused features, to the extent such documents exist and can be located  
16 after a reasonable search.

17           **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

18           Subject to and without waiving the foregoing General and Specific Objections, McAfee  
19 further responds as follows:

20           To the extent that TVIIM’s claims can be understood from its imprecise and insufficient  
21 infringement contentions, McAfee’s accused products do not infringe the ’168 patent, either  
22 literally or under the doctrine of equivalents, for at least the following reasons:

23           TVIIM has not shown that the accused McAfee products provide a “security system for a  
24 computer apparatus, wherein said computer apparatus includes a processors and a system  
25 memory” as recited by claim 1 or a “method of providing a security assessment for a computer  
26 system which includes a system memory” as recited by claim 11. For example, in the accused

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1 McAfee products software running on remote computers and/or hosts may initiate the accused  
2 functionality and/or perform the accused functionality on a computer apparatus or computer  
3 system. In contrast, the ’168 patent is directed at a security system wherein all the accused  
4 functionality resides on a single computer. *See, e.g.*, ’168 patent at 1:65-2:5 (“Described herein  
5 is a security system which identifies security vulnerabilities and discrepancies for a computer  
6 system. . . . The computer system on which the security system resides may include a processor  
7 and operational memory which contains all data which is to be analyzed by the security system  
8 described herein.”); FIG. 1. Therefore, the accused McAfee products do not meet these  
9 limitations of claims 1 and 11.

10 TVIIM has not shown that the accused McAfee products provide “at least one security  
11 module which under direction from the processor accesses and analyzes selected portions of the  
12 computer apparatus to identify vulnerabilities” as recited by claim 1 or “accessing the system  
13 memory and performing at least one procedure to provide a security assessment for at least one  
14 aspect of the computer system” and “as a result of any vulnerabilities discovered in the  
15 assessment . . .” as recited by claim 11. For example, when, and to the extent, the accused  
16 McAfee products identify exploitations of vulnerabilities, such as intrusions, viruses, worms,  
17 malware, or other promiscuous computer code, the claim language reciting “identify[ing]” or  
18 “discover[ing]” “vulnerabilities” is not met. In addition, the accused McAfee consumer products  
19 and Remediation Manager assess whether, for certain installed software applications, a more up-  
20 to-date version is available—*i.e.*, a software patch management functionality. A determination  
21 that a certain installed software application is not up-to-date is not the identification of a  
22 vulnerability on the computer system, as that term is used/disclosed in the patent. Further, the  
23 accused McAfee products Agent and ePolicy Orchestrator provide administrative functions for  
24 the entire family of McAfee enterprise products, including both accused and non-accused  
25 products. The accused McAfee products Agent and ePolicy Orchestrator themselves provide no  
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1 functionality for “identify[ing]” or “discover[ing]” “vulnerabilities.” Therefore, the accused  
2 McAfee products do not meet these limitations of claims 1 and 11.

3 TVIIM has not shown that the accused McAfee products provide “at least one security  
4 module which under direction from the processor access and analyzes selected portions of the  
5 computer apparatus” as recited by claim 1 or “accessing the system memory and performing at  
6 least one procedure to provide a security assessment for at least one aspect of the computer  
7 system” as recited by claim 11. For example, the accused McAfee products may perform their  
8 functionality without “accessing” the “portion[]” or “aspect” that is analyzed. In contrast, claims  
9 1 and 11 require both “accessing” **and** “analyz[ing]” or “assess[ing]” a “selected portion[]” or  
10 “aspect” of the computer. Therefore, the accused McAfee products do not meet these limitations  
11 of claims 1 and 11.

12 TVIIM has not shown that the accused McAfee products provide “at least one utility  
13 module which under the direction from the processor, performs various utility functions with  
14 regards to the computer apparatus in response to the identified vulnerabilities” as recited by  
15 claim 1. For example, to the extent that TVIIM asserts that the software patch management  
16 functionality of the accused McAfee consumer products and Remediation Manager or the  
17 reporting functionality of the accused McAfee products is a “utility module” that “performs  
18 various utility functions,” neither patch management nor reporting is a “utility function[]” as  
19 disclosed by the ’168 patent. (*See, e.g.*, ’168 patent, at Abstract, Col. 2:41-52, Col. 2:56-59, Col.  
20 3:35-37, Col. 4:6-8, Col. 6:41-7:14, FIG. 8.) In addition, the accused McAfee consumer  
21 products do not report a vulnerability identified during an assessment. Instead, the accused  
22 McAfee consumer products report simply whether a more up-to-date software version is  
23 available. Further, the functionalities accused in the accused McAfee products do not provide  
24 “various utility functions”—*i.e.*, multiple different utility functions—in response to an  
25 “identified vulnerabilit[y].” The functionalities accused in the accused McAfee products

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1 provide at most one functionality in response to the results of an assessment. Therefore, the  
2 accused McAfee products do not meet this limitation of claim 1.

3 TVIIM has not shown that the accused McAfee products provide “at least one security  
4 module which under direction from the processor accesses and analyzes . . .” or “at least one  
5 utility module which under the direction of the processor, performs various utility functions . . .”  
6 as recited by claim 1. For example, in the accused McAfee products the accused functionality is  
7 directed by a software program or command from a remote network, rather than the processor of  
8 a computer apparatus itself. Therefore, the accused McAfee products do not meet these  
9 limitations of claim 1.

10 TVIIM has not shown that the accused McAfee products provide “a security subsystem  
11 in the computer system” as recited by claim 11. For example, the accused McAfee products do  
12 not provide a dedicated or particular subsystem to perform the accused functionality. For all the  
13 accused McAfee products except certain versions of Network Access Control, no physical  
14 hardware is provided at all. Therefore, the accused McAfee products do not meet this limitation  
15 of claim 11.

16 TVIIM has not shown that the accused McAfee products provide “as a result of any  
17 vulnerabilities discovered in the assessment, identifying corrective measures to be taken with  
18 regards to the computer system,” “reporting the discovered vulnerability and the identified  
19 corrective measures,” and “upon receiving an appropriate command, initiating the corrective  
20 measures,” as recited by claim 11. For example, excluding Remediation Manager, the accused  
21 McAfee enterprise products do not identify, report, or initiate any corrective action. Further, the  
22 accused McAfee consumer products and Remediation Manager provide, at most, patch  
23 management functionality that reports out-of-date software, downloads up-to-date patches,  
24 installs up-to-date patches, and may re-scan the computer. This patch management functionality  
25 is not a claimed “corrective measure[].” In addition, the accused McAfee consumer products and  
26 Remediation Manager provide, at most, a single responsive action to out-of-date software—*i.e.*,  
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1 installing the up-to-date patch—not multiple “corrective measures” as required by the claim.  
2 Further, the accused McAfee consumer products and Remediation Manager are configurable to  
3 find and install up-to-date patches without (a) reporting the up-to-date patch prior to installing it,  
4 or (b) seeking and receiving permission from a user to install the up-to-date patch prior to  
5 installing it. TVIIM has not demonstrated that any user of the accused McAfee consumer  
6 products or Remediation Manager performed the steps of the method of claim 11 in the required  
7 order. Therefore, the accused McAfee products do not meet these limitations of claim 11.

8       Further, pursuant to Fed. R. Civ. P. 33(d), McAfee identifies the following list of  
9 documents that to date McAfee has identified as relevant to the subject matter of this  
10 interrogatory: source code for the accused McAfee products (as made available for inspection),  
11 TVIIM000765, 84902DOC011428, 84902DOC010374, 84905DOC070982, Ex. 3 to deposition  
12 of Mr. Yannick Yu, 84901DOC030009, 84901DOC031031, 84905DOC071048,  
13 84901DOC030807, 84901DOC031064, 84905DOC071503, 84901DOC029308,  
14 84905DOC071851, 84904DOC007095, 84904DOC002862,  
15 84904DOC010509, 84904DOC006649, 84904DOC009616, 84904DOC009604,  
16 84904DOC007460, 84905DOC016096, 84901DOC029627, 84905DOC072038,  
17 84901DOC030744, 84904DOC012283, 84904DOC012481, 84904DOC012534,  
18 84904DOC012626, 84904DOC012791, 84904DOC012568, 84904DOC012479,  
19 84904DOC012517, 84904DOC012542, 84901DOC058608, 84901DOC059973,  
20 84905DOC060910, 84905DOC055384, 84905DOC056021, 84905DOC058422,  
21 84905DOC059727, 84905DOC061711, 84901DOC034400, 84905DOC058623,  
22 84905DOC059630, 84901DOC017890, 84905DOC055595, 84901DOC023219,  
23 84901DOC023433, 84901DOC023717, 84901DOC025081, 84901DOC001680,  
24 84901DOC023183, 84901DOC023744, 84901DOC023770, 84901DOC002634,  
25 84901DOC023417, 84905DOC058211, 84901DOC002136, 84901DOC002650,  
26 84901DOC013086, 84901DOC018309, 84901DOC013880, 84901DOC013502,

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84901DOC019618, 84901DOC001331, 84901DOC001370, 84905DOC007931,  
84905DOC059796, 84901DOC013673, 84901DOC010513, 84901DOC002174,  
84901DOC013328, 84901DOC008987, 84901DOC002467, 84905DOC063741,  
84901DOC001437, 84901DOC018771, 84901DOC015040, 84901DOC002118,  
84906DOC002211, 84901DOC002449, 84901DOC011128, 84901DOC019211,  
84901DOC009835, 84901DOC097322, 84901DOC097347, 84901DOC097916,  
84901DOC018048, 84901DOC010821, 84901DOC006467, 84901DOC007588,  
84901DOC019034, 84905DOC060793, 84905DOC061350, 84905DOC059519,  
84901DOC007416, 84901DOC007416, 84901DOC097411, 84901DOC097582,  
84901DOC097665.

As discovery is ongoing, McAfee reserves the right to further supplement and/or amend its response as appropriate, and to rely on other, additional, and/or different facts in its expert report.

## **INTERROGATORY NO. 3:**

Please Identify each and every basis for YOUR contention, set forth under the heading “SECOND AFFIRMATIVE DEFENSE” in YOUR ANSWER AND COUNTERCLAIM, that “[o]ne or more claims of the ‘168 patent are invalid for failing to meet one or more of the statutory requirements and/or conditions for patentability under 35 U.S.C. §§ 101, 102, 103, and/or 112,” including the principal and material facts and all DOCUMENTS that YOU believe support each basis and all PERSONS who may have knowledge of any such facts.

## **RESPONSE TO INTERROGATORY NO. 3:**

McAfee objects to this Interrogatory as premature under the Civil and/or Patent Local Rules of this Court, including Patent L.R. 2-5(c). McAfee further objects to this Interrogatory as overbroad and unduly burdensome, including but not limited to the extent that it purports to require McAfee to identify or describe “all” or “any” information and persons. McAfee further objects to this Interrogatory on the ground that it seeks premature expert discovery or testimony.

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1 McAfee further objects to this Interrogatory to the extent it calls for legal conclusions and/or  
2 seeks information protected from disclosure by the attorney-client privilege, the work product  
3 doctrine, the common-interest privilege, or any other applicable protection, privilege, or  
4 immunity.

5 Subject to and without waiving the foregoing General and Specific Objections, McAfee  
6 will set forth its invalidity defenses in contentions according to the timeline to be set by the  
7 Court and with the level of detail required by the Civil and/or Patent Local Rules of this Court.  
8

**FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

9 Subject to and without waiving the foregoing General and Specific Objections, McAfee  
10 further responds as follows:

11 McAfee states that its invalidity contentions are set forth in its Patent L.R. 3-3 Invalidity  
12 Contentions for Asserted U.S. Patent No. 6,889,168 (dated May 12, 2014, and supplemented on  
13 June 26, 2014), including all exhibits and attachments thereto, which are hereby incorporated by  
14 reference. McAfee may rely on all the documents cited therein. Further, McAfee reserves the  
15 right to rely on third-party discovery responses, documents, and witness testimony that bears on  
16 the invalidity contentions that McAfee has served; that discovery is ongoing. Third parties with  
17 potentially relevant knowledge include: Patrick Taylor, David Gerulski, Robert Parker,  
18 Symantec Corp., Karen A. Casella, and USENIX Association.

19 As discovery is ongoing, McAfee reserves the right to further supplement and/or amend  
20 its response as appropriate.

**INTERROGATORY NO. 4:**

21 Please identify each and every basis for YOUR contention, set forth under the heading  
22 “THIRD AFFIRMATIVE DEFENSE” in YOUR ANSWER AND COUNTERCLAIM, that  
23 “Plaintiff is not entitled to injunctive relief because any alleged injury to Plaintiff is neither  
24 immediate nor irreparable, and Plaintiff has an adequate remedy at law,” including the principal  
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1 and material facts and all DOCUMENTS that YOU believe support each basis and all PERSONS  
2 who may have knowledge of any such facts.

3 **RESPONSE TO INTERROGATORY NO. 4:**

4 McAfee objects to this Interrogatory on the ground that it improperly attempts to shift  
5 TVIIM’s burden to show that it is entitled to injunctive relief to McAfee. McAfee further  
6 objects to this Interrogatory as overbroad and unduly burdensome, including but not limited to  
7 the extent that it purports to require McAfee to identify or describe “all” or “any” information  
8 and persons.

9 Subject to and without waiving the foregoing General and Specific Objections, McAfee  
10 states that it understands that TVIIM does not make any tangible product(s), and is simply  
11 attempting to monetize the asserted patent rather than protect an actual product business. As  
12 such, TVIIM cannot establish the predicate factors required for injunctive relief.

13 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:**

14 Subject to and without waiving the foregoing General and Specific Objections, McAfee  
15 further responds as follows:

16 Pursuant to Fed. R. Civ. P. 33(d), McAfee identifies the following documents:  
17 TVIIM005581-TVIIM005583, TVIIM005584-TVIIM005586, TVIIM005587-TVIIM005589,  
18 TVIIM005590-TVIIM005592, TVIIM005593-TVIIM005595, TVIIM005596-TVIIM005598,  
19 VOCK000859-VOCK000895.

20 As discovery is ongoing, McAfee reserves the right to further supplement and/or amend  
21 its response as appropriate, including as additional documents are produced.

22 **INTERROGATORY NO. 5:**

23 Identify all PERSONS employed by, or otherwise associated with, MCAFEE, including  
24 their job titles, who were and/or are responsible for or involved in the design, development,  
25 production and/or testing of the VULNERABILITIES TECHNOLOGY and commercial  
26 products containing or using the VULNERABILITIES TECHNOLOGY or any of them.

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1           **RESPONSE TO INTERROGATORY NO. 5:**

2           McAfee objects to this Interrogatory on the basis that it is vague and ambiguous,  
3 particularly in its use of the terms “otherwise associated with,” “responsible for,” “involved in,”  
4 “VULNERABILITIES TECHNOLOGY,” and “or any of them.” McAfee further objects to this  
5 Interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the  
6 discovery of admissible evidence. The Interrogatory is wholly unlimited as to time, scope  
7 (including but not limited to geographic scope), products at issue in this case, or even products  
8 sold by McAfee. McAfee further objects to this Interrogatory on the ground that it seeks  
9 information that is not known to McAfee, not within McAfee’s possession, custody, or control,  
10 or that does not exist in the ordinary course of McAfee’s business.

11           Subject to and without waiving the foregoing General and Specific Objections, after  
12 TVIIM has identified the particular products and functionality it is accusing of infringement,  
13 McAfee will identify persons with knowledge of the design and operation of the specifically  
14 identified accused features.

15           **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:**

16           Subject to and without waiving the foregoing General and Specific Objections, McAfee  
17 further responds as follows:

18           McAfee identifies the following persons by name and title with knowledge of the design  
19 and operation of the specifically identified accused features: Kevin Cook (Senior Director of  
20 Engineering), Richard Craighead (Vice President of Engineering), T. Gregory Cummings  
21 (Senior Director of Engineering, Risk & Compliance), Ryan Nakawatase (former Senior  
22 Manager of Engineering), Darren Thomas (Senior Product Manager, Vulnerability &  
23 Discovery), and Yannick Yu (Software Engineering Manager).

24           As discovery is ongoing, McAfee reserves the right to further supplement and/or amend  
25 its response as appropriate.

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**INTERROGATORY NO. 6:**

Please identify all revenue (gross, net and otherwise) which YOU realized in whole or in part from the ACCUSED INSTRUMENTALITIES and commercial products containing or using the ACCUSED INSTRUMENTALITIES, describe the methodology used to determine such revenue, and identify DOCUMENTS that support YOUR response.

**RESPONSE TO INTERROGATORY NO. 6:**

McAfee objects to this Interrogatory on the basis that it is vague and ambiguous, particularly in its use of the terms “otherwise,” “realized . . . in part,” “ACCUSED INSTRUMENTALITIES,” and “methodology.” McAfee further objects to this Interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory is wholly unlimited as to time, scope (including but not limited to geographic scope), or products at issue in this case. McAfee further objects to this Interrogatory on the ground that it purports to require McAfee to create documents or generate information that McAfee does not keep or track in the ordinary course of business.

Subject to and without waiving the foregoing General and Specific Objections, after TVIIM has identified the particular products and functionality it is accusing of infringement, McAfee will produce non-privileged documents sufficient to show United States-based revenues for the specifically identified accused products, to the extent such documents exist and can be located after a reasonable search.

**FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 6:**

Subject to and without waiving the foregoing General and Specific Objections, McAfee further responds as follows:

Pursuant to Fed. R. Civ. P. 33(d), McAfee identifies the following documents:  
84908DOC010754, 84908DOC010755, 84908DOC010756, 84908DOC010757,  
84908DOC010758, 84908DOC010759.

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1 As discovery is ongoing, McAfee reserves the right to further supplement and/or amend  
2 its response as appropriate, including as additional documents are produced.  
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4 Dated: November 21, 2014

Respectfully submitted,

6 */s/ Katherine D. Prescott*

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15 Boston, MA 02109  
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17 *Attorneys for Defendant and*  
*Counterclaim-Plaintiff McAfee, Inc.*

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1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify under penalty of perjury under the laws of the United States that a true  
3 and correct copy of the above and foregoing document has been served on November 21, 2014 to  
4 all counsel of record via electronic mail.

5  
6                   Dated: November 21, 2014

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8                   /s/ *Michael Wolin*  
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